

1 STUART F. DELERY
Assistant Attorney General
2 Civil Division
3 COLIN A. KISOR
Acting Director, District Court Section
4 AARON S. GOLDSMITH
Senior Litigation Counsel
5 HANS H. CHEN
Trial Attorney
6 United States Department of Justice, Civil Division
7 Office of Immigration Litigation, District Court Section
8 P.O. Box 868, Ben Franklin Station
Washington, DC 20044
9 Telephone: (202) 307-4469, Facsimile: (202) 305-7000
Email: hans.h.chen@usdoj.gov
10 ATTORNEYS FOR DEFENDANTS

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 IRISH HELP AT HOME LLC and) No. 3:13-cv-00943-MEJ
14 BRIDGET McDERMOTT,)
)
15 Plaintiffs,)
)
16 v.)
17)
ROSEMARY MELVILLE, California Service)
18 Center, U.S. Citizenship and Immigration)
Services; ALEXANDER MAYORKAS,)
19 Director, U.S. Citizenship and Immigration)
20 Services; U.S. DEPARTMENT OF)
HOMELAND SECURITY; JANET)
21 NAPOLITANO, Secretary,)
22)
Defendants.)

23 **JOINT STATUS REPORT AND STIPULATION FOR STAY**
24

25 Pursuant to the Court's April 18, 2014, status order, Plaintiffs Irish Help At Home LLC
26 ("Irish Help At Home") and Bridget McDermott ("McDermott," and collectively with Irish Help
27 At Home, "Plaintiffs") and Defendants Rosemary Melville, Alexander Mayorkas, U.S.
28

Joint Status Report and
and Stipulation for Stay
No. 3:13-cv-00943-MEJ

United States Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Washington, D.C. 20044
(202) 307-4469

Department Of Homeland Security (“DHS”), and Jeh Johnson¹ (collectively “Defendants,” and collectively with Plaintiffs, the “Parties”) stipulate as follows:

This is an immigration case in which Plaintiffs challenge the denial by United States Citizenship and Immigration Services (“USCIS”) of Plaintiffs’ petition for an H-1B visa for its prospective employee, McDermott (“H-1B Petition”).

The principal issue in this case is whether the certified administrative record (“CAR”) supports USCIS’s decision denying Plaintiffs’ H-1B Petition. Plaintiffs contends that because the CAR does not support AAO’s decision, the agency’s decision is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). Defendants contend that the CAR supports the AAO’s decision and the Court must defer to the agency’s reasonable interpretation of its governing regulations. *See Auer v. Robbins*, 519 U.S. 452, 461-62 (1997). In their first amended complaint, Plaintiffs seek an order directing Defendants to approve the H-1B Petition. Plaintiffs do not seek damages.

USCIS initially denied Plaintiffs’ H-1B Petition on December 13, 2012. On March 1, 2013, Plaintiffs filed their complaint in this action. On May 14, 2013, USCIS reopened the matter on its own motion. On September 27, 2013, USCIS again denied the H-1B Petition but certified the decision to USCIS’s Administrative Appeals Office (“AAO”) for review.

From October 2, 2013, to October 21, 2013, this matter was stayed due to a lapse in appropriations to the United States Department of Justice. (ECF Nos. 10, 12.)

On October 30, 2013, Plaintiffs filed their amended complaint to include allegations concerning USCIS’s second denial of the H-1B Petition. (ECF No. 13.) On November 12, 2013, Defendants filed their answer to the amended complaint (ECF No. 14.) Meanwhile, the H-1B Petition remained pending before the AAO.

On February 5, 2014, the AAO issued a written ruling affirming USCIS’s visa denial. On March 5, 2014, Plaintiffs filed a motion to reopen the AAO decision so that Plaintiffs could

¹ Jeh Johnson was sworn in as Secretary of the Department of Homeland Security on December 23, 2013. Defendants therefore request that the Court substitute Secretary Johnson for former Secretary Janet Napolitano as a defendant in this action. *See* Fed. R. Civ. P. 25(d).

1 submit additional evidence to the AAO, supplement the CAR, and seek an administrative remedy
2 to their claims.

3 Because Plaintiffs' motion to reopen remains pending before the AAO, Plaintiffs have
4 not filed a second amended complaint that includes allegations relating to the AAO's February 5,
5 2014, decision or to Plaintiffs' motion to reopen. Additionally, while the Parties believe that the
6 Court can decide the entire case based on cross-motions for summary judgment, the Parties have
7 not yet proposed a briefing schedule on cross-motions for summary judgment because the
8 motion to reopen remains pending before the AAO.

9 To permit the AAO time to decide Plaintiffs' motion to reopen, the parties stipulate to an
10 order imposing a forty-five day stay in this action. If the motion to reopen remains pending
11 before the AAO at the end of the forty-five day stay, the parties will submit a supplemental status
12 report at the conclusion of the forty-five day stay period. If the AAO has ruled on the motion to
13 reopen before the conclusion of the forty-five day stay, the parties will submit, at the conclusion
14 of the forty-five day stay period, a proposed schedule for Plaintiffs to file a second amended
15 complaint, for Defendants to file their answer and to provide Plaintiffs with a CAR, and for
16 briefing on the Parties' cross-motions for summary judgment.

1 Dated: May 1, 2014

2 THE LAW OFFICE OF
3 JAMES M. BYRNE

4 /s/James M. Byrne

5 James M. Byrne
6 1374 Pacific Avenue
7 San Francisco, California 94109
8 Tel: (415) 777-4444
9 Fax: (415) 777-0282
10 jbyrne@byrne-law.net

11 ATTORNEYS FOR PLAINTIFFS

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General
Civil Division

COLIN A. KISOR
Acting Director
District Court Section

AARON S. GOLDSMITH
Senior Litigation Counsel

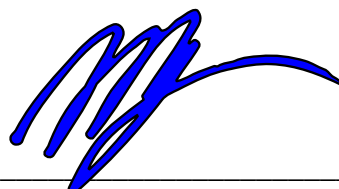
12 /s/ Hans H. Chen

13 HANS H. CHEN
14 Trial Attorney
15 United States Department of Justice
16 Civil Division
17 Office of Immigration Litigation
18 District Court Section
19 P.O. Box 868, Ben Franklin Station
20 Washington, DC 20044
21 Tel: (202) 307-4469
22 Fax: (202) 305-7000
23 hans.h.chen@usdoj.gov

24 ATTORNEYS FOR DEFENDANTS

25 PURSUANT TO STIPULATION, IT IS SO ORDERED

26 Dated: May 2, 2014



27 THE HON. MARIA-ELENA JAMES
28 UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 1, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically filed Notices of Electronic Filing.

/s/ Hans H. Chen

HANS H. CHEN

Trial Attorney

United States Department of Justice

Civil Division

Office of Immigration Litigation

District Court Section